IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.654 of 2000
with
SPECIAL CIVIL APPLICATION No.2794 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMBUJA METAL INDUSTRIES PVT LTD
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 654 of 2000
MR DG CHAUHAN for with
Mr.Mahendra M. Shah for the petitioner.
Ms.Nandini Joshi, Assistant Govt. Pleader for
Respondents No. 1-2
MR HM BHAGAT for Respondent No. 3

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 05/12/2001

ORAL JUDGEMENT

Both these matters have a common question. Therefore, they are decided by this common judgement. In both these petitions the order passed by the Deputy Collector under Bombay Stamp Act, 1958 (hereinafter referred to as "the Act") is under challenge on the common grounds that the action being beyond the period prescribed under sec.32A(4) of the Act. Subsection (4) of section 32A of the Act reds as under:

"32A (4) The Collector of the district may, suo motu or on receipt of information from any source, within six years from the date of registration of any instrument referred to in subsection (1), (not being the instrument upon which an endorsement has been made under section 32 or the instrument in respect of which the proper duty has been determined by him under subsection (3) or an instrument executed before the date of the commencement of the Bombay Stamp (Guajrat Amendment) Act, 1982) (Guj. 21 of 1982) call for examine the instrument for the purpose of satisfying himself as to the correctness of the consideration or of the market value of the property which is the subject matter of such instrument and the duty payable thereon; and if on such examination, he has reason to believe that the consideration does not approximate to the market value of such property or, as the case may be, market value of such property has not been truly and fully set forth in the instrument, he shall proceed as provided in subsections (2) and (3)."

2. The order is also challenged on the ground that the authorities have not followed the procedure prescribed under sec.32A of the Act for determination of market value of the property which is the subject matter of conveyance though it is so mentioned in the notice dated 30.11.1999 in Special Civil Application No.654 of 2000, which is produced at Annexure 'D'. Learned advocate appearing for the petitioners in Special Civil Application No.654 of 2000, Shri D.G. Chauhan also pointed out that the notice contains an incorrect statement to the effect that in spite of service of notice and the reminders, the parties did not file any reply to the notice dated 4.12.1998. Mr.Chauhan, learned advocate invited attention of the Court to the reply/ objections filed after receiving the notice dated 4.12.1998 on 28.12.1998, which are produced on record at Annexure 'C', page 24 of the petition, Special Civil Application No.654 of 2000. Learned advocates appearing

for the petitioners in both these petitions have also challenged these orders on the ground that the same are in violation of principles of natural justice inasmuch as the authorities have not supplied any material to the petitioners, which is relied upon by the authorities for determination of market value of the property and to that extent principles of natural justice are not observed and the order is vitiated on that count.

3. In Special Civil Application No.2794 of 2001, learned advocate Mr.M.H. Rathod submitted that in his case also in response to the notice dated 27.7.2000 a reply/ objection was filed on 7.8.2000, a copy of which is on record at Annexure 'C', page 31-32. Order dated 4.1.2001 which is produced at Annexure 'D' to the petition, Special Civil Application No.2794 of 2001 states that the party by its reply dated 7.8.2000 had consented to pay the deficit stamp duty and also the amount of penalty. Mr.Rathod, learned advocate submitted that this shows utter non application of mind on the part of the authority as the parties have neither consented for payment of deficit stamp duty nor for payment of amount of penalty.

4. Learned Assistant Govt. Pleader Ms.Nandini Joshi appearing for the authorities submitted that these petitions are not required to be entertained in view of the alternative remedy available to the petitioners under the provisions of sec.32B. She submitted that the parties aggrieved of the order of the Collector can file an appeal under this section before the Chief Controlling Revenue authority. Only because at the time of filing of an appeal the party has to deposit 25% of the amount of duty of which the appellate authority is having power to waive upto 50 % of the amount which is required to be deposited. It cannot be contended by the petitioners that the remedy of appeal is cumbersome and causing hardship to the petitioners.

5. Learned advocate appearing for the petitioners submitted that in the present case the question regarding exercise of power by the Collector under sec.32A beyond the time limit prescribed under subsection (4), is concerned, it make the order nullity. Therefore, it is a fit case which may be entertained by way of petition under Article 226 and 227 of the Constitution of India. Learned advocate submitted that subsection (4) was amended and the period which was earlier of "two years" has now been increased to "six years". Therefore, there is all the more reason to entertain this petition and to hold that once the Legislature has prescribed a specific

time for the authorities to exercise particular power, said power can be exercised only within the period so prescribed and not beyond that. Learned advocate submitted that these petitions are required to be allowed on this short ground. In the alternative, learned advocate submitted that if the Court is not inclined to allow these petitions on this ground alone, the other grounds are also equally important and good for consideration and the petitions are required to be allowed on those grounds.

6. Learned advocates for the petitioners relied upon the judgement of this Court (Coram : K.G. Balakrishnan, C.J. & S.D. Dave, J.) in Special Civil Application No.1731 of 1999 dated 26.7.1999. The relevant portion of the said judgement reads as under :

> "This rule could be divided in two parts. Rule 4(i)(a) is regarding the procedure to be followed by the Collector for the purpose of recording the provisional determination. Rule 4(2) pertains to the later part of the procedure under which after hearing the party concerned and examining the material which could be laid before the Collector, the actual stamp duty which is required to be paid could be assessed. The grievance of the petitioner is that, while giving the notice under Rule 4(2) of the said rules, the notice does not show the basis on which the true market value of the property has been provisionally determined. Though the litigation is in the field of public interest, certain notices have been produced on record with a view to show as to how the procedure is being adopted by the concerned respondent. Annexure 'C' happens to be one such a notice dated January 8, 1999 addressed to one Nanubhai Solanki. There is a specific mention in this format notice regarding particulars of the basis on which the provisional determination is based. Needless it is to say that any person preparing such a notice would immediately know that the basis of provisional determination is required to be filled in this gap. Any how this is not being done."

7. Learned advocate for the petitioners relied upon a judgement of the Full Bench of this Court in the matter of Gorva Vibhag Cooperative Housing Societies Association & anr. v. State of Gujarat and others, reported in 1992 (1) GLR 654, to contend that the Full Bench was pleased

to uphold the provisions of sections 32A and 32B as the Court was of the opinion that the procedure prescribed therein is scientific, reasonable and rational. The Full Bench has also taken into consideration that the rules provided for exhaustive detailed procedures for determining the market value of the property and they also provide for giving adequate reasonable opportunity of hearing to the concerned person at every stage. Learned advocates invited attention of the Court to para 31 of the judgement. Learned advocate submitted that the authorities have not followed the said procedure in the present case. Therefore, the action of the authorities is vitiated.

8. Learned advocate submitted that in the present case also the authorities have not followed the procedure prescribed under Rule 4(1)(a) to that extent and therefore, order is vitiated and the same is required to be quashed and set aside. Learned advocate for the petitioner in Special Civil Application No.654 of 2000 submitted that the order dated 30.11.1999, produced at Annexure 'D', page 27 of that petition though mentions that the market value of the property which is the subject matter of the instrument, is determined after following due procedure prescribed under section 32A of the Bombay Stamp Act and is determined at Rs.33,85,448/-. There is no material produced on record to show as to what procedure was followed by the authorities to determine the market value of the property which is the subject matter of the instrument.

9. Mr.Rathod, learned advocate for the petitioner in Special Civil Application No.2794 of 2001 also submitted that though it is mentioned in the order dated 4.1.2001, Annexure 'D', page 33 of that petition, the authorities have not produced any material to support their action. Both the learned advocates submitted that in fact the orders which are passed by the authorities are cyclostyled and by filling up certain blanks it is mentioned that the market value is determined after following due procedure. In any case they do not disclose either the procedure or the material to the party concerned. Therefore, the order is bad in law on account of non observance of the procedure prescribed under law, which amounts to violation of principles of natural justice and therefore, order is required to be quashed and set aside.

10. Learned advocates for the petitioners submitted that so far as the question regarding exercise of powers under section 32A beyond the time prescribed, i.e. two

years or six years, as the case may be, the judgement of larger Bench of this Court in the matter of Shailesh Jadvaji Varia v. Sub Registrar, Narmada Bhavan and ors., reported in 1996 (2) GLH 848 has observed in para 94 as under :

"94. .. ..

Question No.1: .. ..
We express no opinion on the second part of Question No.1, namely, whether the Collector can suo motu exercise power under subsection (4) of section 32A beyond two years (or six years)."

11. Learned advocate submitted that in light of the fact that the time limit which was earlier two years was raised to six years is indicative of the fact that the Legislature wanted the authorities to act within period prescribed. If the Legislature wanted the authorities to act beyond that limit there was no reason for the Legislature to increase that limit from two years to six years. The fact that the time limit is increased by the Legislature, it is to be inferred that it wanted the authorities to act within that time limit. Therefore, the Court may hold the action of teh respondent authorities as devoid of any power and the same be quashed and set aside on that ground alone.

12. Learned Assistant Govt. Pleader submitted that an affidavit in reply is filed in Special Civil Application No.2794 of 2001. Said reply denies all the averments made and contentions raised in the Special Civil Application. The affidavit in reply also does not disclose any material to show that the procedure prescribed under either section 32A or Rule 4 was followed. It does not disclose any material which is relied upon by the authorities to determine the market value of the property which is the subject matter of the instrument. In absence of such material, the affidavit in reply is of no assistance to the Court in adjudicating upon the dispute involved in the petition. The question involved in the petition whether the authorities should have exercised power beyond the time prescribed by the statute is answered accordingly.

13. In view of the aforesaid discussion, both these petitions are allowed. The order passed by the respondent authorities, namely, Annexure 'D' dated 4.1.2001, page 33 to Special Civil application No.2794 of 2001 is quashed and set aside. The order dated 30.11.1999, Annexure 'D' to Special Civil Application

No.654 of 2000 is also quashed and set aside. Rule is made absolute. There being no material to suggest that the authorities had acted mala fide, no orders as to cost.

(Ravi R. Tripathi, J.)

karim